IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,

Petitioners,

v.

ILLINOIS STATE BAR ASSOCIATION, AN ILLINOIS NOT FOR PROFIT CORPORATION, CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON AND MARSHALL A. SUSLER, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of Illinois

BRIEF OF PETITIONERS, UNITED MINE WORKERS OF AMERICA, DISTRICT 12

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Illinois[1] (R. 94-105)[2] is reported at 219 N.E. 2d 503 (1966). No opinion was rendered by the trial court.

[1] Herein called "Illinois Supreme Court".

[2] The symbol "R." refers to the printed Transcript of Record.

JURISDICTION

The Illinois Supreme Court's judgment was entered May 23, 1966 (R. 106). A duly filed Petition for Rehearing was denied September 21, 1966 (R. 107-08). Petition for a writ of certiorari was filed December 20, 1966 and granted February 27, 1967 (R. 108). This Court has jurisdiction under 28 USC, Section 1257(3).

QUESTIONS PRESENTED

1. Does a state court decree conflict with rights guaranteed to coal miners, members of an unincorporated labor union, under the First and Fourteenth Amendments to the Constitution of the United States when it holds that such labor union engages in the unauthorized practice of law by employing a duly licensed practicing attorney on a salary basis, and paid by it from membership dues, to represent union members in the prosecution of claims before a state agency for benefits under a state workmen's compensation act where the injured members may, but are not required to, use such services?

2. Is there in this case a compelling state interest which warrants a limitation of such constitutional guarantees?

3. Does the state court decree violate the rights of such members to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947?

4. Is there in the record any substantial evidence to sustain the restraining order and decree?

CONSTITUTIONAL AND STATUTORY PROVISIONS AND CANONS OF ETHICS INVOLVED

Pertinent constitutional provisions involved consist of the First and Fourteenth Amendments to the Constitution

of the United States. In addition, Section 7, Labor Management Relations Act, 1947, as amended (29 USC, Section 157 and herein called "Act"), and Canons 35 and 47, Canons of Ethics of the Illinois State Bar Association and Illinois Revised Stat. (1959), Ch. 48, Sec. 138.21, are involved.[3]

STATEMENT OF THE CASE

A. Pertinent Pleadings and the Federal Questions Raised.

Illinois State Bar Association, an Illinois corporation "not for profit", and certain of its members, individually and as its Committee on Unauthorized Practice of Law,[4] complained in the Circuit Court of Sangamon County of that State[5] that United Mine Workers of America, District 12 (called "United Mine Workers"),[6] which cannot be licensed to practice law, has been engaged in Sangamon and other Illinois counties "in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis" to represent its members "with respect to claims they may have under the" State's Workmen's Compensation Act and thereby has "offered, furnished, and rendered legal services and advice" (R. 1-3). The Bar Association charged such activities to be in contravention of their rights as attorneys at law, public policy and Illinois laws, tends to "degrade the legal profession", "to bring the same into bad repute in the administration of justice", and "to mislead and defraud the public" (R. 3).

[3] Provisions of the foregoing constitutional amendments, federal and Illinois statutes and Canons 35 and 47 are set forth in Appendix A hereto.

[4] Collectively called "Bar Association".

[5] Herein called "trial court".

[6] In the trial court, initial and subsequent pleadings were by "Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and . . . all the members of said association made parties hereto by representation, by Edmund Burke, their attorney . ." (R. 5, 7, 8-9, 11, 23). The Notice of Appeal was by "United Mine Workers of America, District 12, Defendants-Appellants" (R. 26).

An answer filed by Joseph Shannon, a member of District 12, and "all the members" thereof "made parties hereto by representation" by their attorney, conceded that "as an association they are not and cannot be licensed to practice law" in Illinois (R. 8) and denied "they have been for many years engaged in the practice of law" (R. 7) but agreed "they, severally and jointly, employ a competent attorney", a member of the Illinois State and the American Bar Associations, "on a salary basis for the sole purpose of representing them and their dependents before the Industrial Commission in cases of injury and death arising out of and in the course of their employment as coal mine employees, which they and each of them have a legal right to do" (R. 7). Except as above stated, the answer denied "they have offered, furnished, or rendered legal services and advice" (R. 8).

United Mine Workers' Motion for Judgment on the Pleadings (R. 8-10) having been rejected (R. 10), in a Motion for Re-consideration thereof (R. 11), United Mine Workers asserted that "interferences by the State of Illinois, as prayed for by the Plaintiffs, with the employment by the Defendants of attorneys of their own choice to represent them and their dependents, in cases of injury and death arising out of and in the course of their employment, and under the Workmen's Compensation Act, would violate . . the rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States" (R. 11). Upon the trial court's denial thereof (R. 12), the same grounds were asserted in a Motion for Summary Decree filed by all members of District 12 "by Representation, By . . Their Attorney" (R. 23-24). The Summary Judgment Motion was denied

A motion to strike certain allegations and for judgment on the pleadings, filed by United Mine Workers, was rejected by the trial court, as was their motion for reconsideration (R. 8-10).

(R. 24-25), the trial court concluding that "as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney (Stuart Traynor, Esq.) on a salary basis to represent their members with respect to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois." The trial court issued its injunction, discussed *post*, pp. 9-10.

Upon United Mine Workers' appeal to the Illinois Supreme Court (R. 26), the grounds were reasserted (R. 28-29) and United Mine Workers contended the injunction also violated their rights accorded by Section 7, Labor Management Relations Act, 1947 (R. 28).

B. The Facts[6]

More than fifty years ago, to-wit, on February 18, 1913, delegates elected by the members in each of their local Unions to the twenty-fourth annual convention of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union composed of workers employed in and around coal mines in Illinois (R. 14), convened at Peoria in that State and avowed that establishment of a legal department had become an actual necessity and authorized and directed their District Executive Board to establish a legal department to take care of the injury cases of United Mine Workers because "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 14). It was recommended at that convention that *"such establishment should not mean that*

[6] The facts, which concededly are not in dispute (R. 63), are established by admissions in the pleadings, by Answers to Interrogatories (R. 12-17, 55-62), and by depositions (R. 17-20, 31-54).

members be required to accept its counsel if they desired the services of others" (R. 14).[9]

As the Illinois Supreme Court's opinion recites (R. 95), "For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Workmen's Compensation Act."

On August 5, 1963, a duly convened District 12 Executive Board, pursuant to the 1913 authority and directive, employed an attorney admitted to practice in state and federal courts in Illinois (R. 15, 31), a member of the Illinois State Bar Association and American Bar Association, on a salary basis, plus actual transportation and hotel expenses, to handle District 12 workmen's compensation cases (R. 14-15, 19-20).[10] District 12's President, on September 26, 1963, by letter, advised the salaried attorney it would be his duty, with help of "secretaries in the Springfield and West Frankfort offices and officers of Local Unions", to see that "no member or dependent loses his rights under the Act by reason of failure to avail himself of them in time" and "to represent him before the Commission *if he desires your services" but "If he is represented by other counsel you will immediately turn over his file to such counsel"* (R. 19-20). The letter also made clear the attorney would "*receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent"* (R. 20). Representation of employees before the Industrial Commission is the attorney's "total scope" of

[9] All emphases herein are supplied.

[10] In addition, the attorney is a State Senator in Illinois (R. 17, 31). His competency as an attorney is not questioned by the Bar Association or members of its Unauthorized Practice Committee.

employment for United Mine Workers (R. 17, 32). He is responsible to represent the employees "no matter how many may have claims during any particular year" and the "number of cases has nothing to do with" his salary (R. 18, 33); he advances no money on behalf of District 12 or the employees in connection with any hearing held (R. 18, 33); he is not required to do any work outside Illinois nor to do any type of work "other than the representation of" members injured with a claim under Illinois' Workmen's Compensation Act (R. 18, 33-34).[1] Dues are paid by the union members, no portion thereof being allocated to pay the attorney's salary (R. 15). Local union members and officers were informed by letter from the District President of the attorney's availability (R. 15). It is generally known among union members they have a lawyer available to them to present their claims to the Industrial Commission (R. 36-37).

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by union employees entitled "Report to Attorney" on accidents which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department, the salaried attorney presumes it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member, although there is no language appearing on the form which specifically requests that the salaried attorney file such claim (R. 38-39). The application for adjustment of claim is prepared by secretaries in the union offices and when completed the attorney's name is signed by a sec-

[1] The sole exception, as the attorney related (R. 34), is "there might on some occasion be some kind of an incidental consultation that they might have with me just seeking advice of some kind".

retary authorized so to do and sent directly to the Industrial Commission (R. 36, 40). In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the Commission (R. 38, 40), although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations and many claimants consult with him prior to the hearing (R. 43). Claimants are instructed by the attorney if they obtain medical assistance or reports arising therefrom "that it would be helpful to me in presenting" their cases to have "that made available to me" (R. 41). Generally an injured claimant has been examined by his employer's doctor, and the Compensation Act makes the medical report available to the attorney on request (R. 42). On occasion the attorney suggests the claimant seek other medical attention which the attorney feels would be helpful in developing the case or because it is felt the medical attention has been inadequate (R. 42). These determinations are made by the attorney (R. 42). Between the time the claim is filed and the hearing before the Commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a conference with the union member with regard to the latter's claim, although on occasions the attorney advises claimants as to the need for other medical attention (R. 42, 44). Ordinarily, the only thing an injured member receives concerning his claim is a notice to appear before the Industrial Commission, and while this may be the first time the attorney and the injured member come into contact with each other, this does not occur as to the "major number of persons" (R. 43-44). The attorney is always present when an injured claimant appears before an arbitrator (R. 43).

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement (R. 44-45). If the coal company agrees with the Mine Workers' attorney, the latter recommends to the injured member that he accept such resolution of his claim. *Final determination is made by claimants* (R. 45). If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission (R. 45).

The full amount of the settlement or award is paid directly to the injured member (R. 16, 46). No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union (R. 46, 62). Neither the District nor any officer receives any portion of the award (R. 16).

C. The Trial Court's Injunction Against United Mine Workers.

Whereas the trial court rejected United Mine Workers' motion for summary decree, it sustained the Bar Association's Motion for Summary Judgment (R. 24-25), finding and concluding in an Order entered September 7, 1965, "there is no genuine issue as to any material fact in this cause" and that "as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney . . on a salary basis to represent their members with respect to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois" (R. 24-25).

In its September 7, 1965 Order, the trial court also "permanently restrained and enjoined" the "defendants, United Mine Workers of America, District 12, its agents and employees" from (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing its mem-

bers with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois; (4) employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois; and (5) practicing law in any form either directly or indirectly (R. 25).

D. The Illinois Supreme Court Affirmed the Injunction by Final Judgment and Opinion.

The Illinois Supreme Court, by judgment entered May 23, 1966 (R. 106) for reasons disclosed in its Opinion (R. 94-105), affirmed the trial court; and, as noted, it rejected United Mine Workers' Petition for Rehearing by Order entered September 21, 1966 (R. 108).

Though conceding that voluntary associations, such as District 12, are not regarded as legal entities in Illinois (R. 97), the Illinois Supreme Court avowed that "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (R. 97). Pointing to its prior holdings that "organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law", its thesis therefor was that no relation of trust and confidence essential to the attorney-client relationship existed between the membership of those associations and their attorneys (R. 97) and that "'Legal services cannot be capitalized for the profit of laymen, corporate or otherwise'" and "'should not be commercialized . . as if that service were a commodity

which could be advertised, bought, sold and delivered' " (R. 97-98).

The Illinois Supreme Court concedes "There can be no question of the hazards involved in coal mining", and that "undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements" (R. 100). Though avowing that "Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured member or his family, is not to be easily disregarded", and that it is not denied "that the organization has an active interest in securing fair treatment for its members" (R. 100-01), the Illinois Supreme Court nonetheless regarded these factors as "insufficient to override the governing principles in the attorney-client relationship" (R. 101).

The Illinois Supreme Court regarded as "relevant" to its inquiry, the Bar Association's Canons 35 and 47 (R. 99), which were involved in this Court's *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 6, fn. 10, and which Canons, in substance, prohibit a lay intermediary from engaging in the law practice and forbid a lawyer's permitting his services or name to be used in aid of any such unauthorized practice of law. Canon 35 provides that "A lawyer's relation to his client should be personal, and the responsibility should be direct to the client" and it permits employment of attorneys by "an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested" but it excludes "legal services to the members of such an organization in respect to their individual affairs" (R. 100).

The Illinois Supreme Court condemned the legal aid plan of United Mine Workers because *"The lawyer is not paid for his services by the client; his salary is paid by the association"* (*R. 101*), *and because* (*although there is no factual predicate therefor*) *"the interests of the employer and the client" and "the interests of the union, collectively, may extend beyond the interest of the injured member"* (R. 101). These factors, it believed, "all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties" (R. 102). Thus, the Illinois Supreme Court concluded that "United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (R. 102).

To the United Mine Workers' claim that the trial court's decree violated their right to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947 (29 USC 157), the Illinois Supreme Court argued that if the condemned conduct is not constitutionally protected, "it cannot seriously be argued" that the statute just adverted to "restricts the States from regulating the practice of law" (R. 102).

The Illinois Supreme Court rejected United Mine Workers' contention that the trial court's decree fell within the proscriptions enunciated by this Court's *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1, and *N.A.A.C.P.* v. *Button*, 371 U.S. 415. The *Trainmen's* "holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by

it to handle individual membership claims," argued that Court (R. 103), and therefore, it declared, "we do not read *Virginia Railroad Trainmen* as constitutionally protecting . . employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" (R. 103). Similarly, it rejected the applicability of *Button*, and though noting that therein attorneys furnished by N.A.A.C.P. "were apparently compensated on a *per diem* basis by the organization," (R. 103), the Illinois court undertook distinguishment by its statement that "the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot . . be equated with the bodily injury litigation . . concerned here" (R. 103), and by avowing that "Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation" (R. 104).

The Illinois Supreme Court found constitutional infringement, if any, justified by the State's interest in controlling standards of professional conduct (R. 104). It declared, "The prohibition of payment by the organization" of the lawyer's compensation "may not be said to be direct suppression of the member's first amendment right to petition the courts"; and that there is no constitutional objection "unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees is a constitutionally impermissible impairment" (R. 104-5). Admitting this would be true in case of indigent claimants, the appellate court declared "the net effect upon the union member differs not at all from that upon other injured citizens" (R. 105).

As a further justification, not warranted by the facts, the Illinois Supreme Court *speculated* that "substantial commercialization of the law profession may follow" if the legal aid plan were allowed and that there may be an expansion of activity to encompass "legal problems involving domestic relations, contracts, criminal law and other areas of the legal field" and that "the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result" the Court believed "contrary to the" public interest (R. 105).

SUMMARY OF ARGUMENT

I.

The Illinois Supreme Court's Opinion and Judgment violate the Federal Constitution's First and Fourteenth Amendments, as well as Section 7, Labor Management Relations Act, 1947.

This Court, in *Trainmen,* recognized that traditionally union members look to labor unions for help in problems associated with working conditions. With benefit scales under workmen's compensation statutes tailored to cover only minimum support of claimants during disability, payment of an attorney fee, even in successful prosecution of claims for benefits, thwarts the social objectives of compensation legislation. Illinois' compensation statute specifically provides against any lien upon an award of benefits, and this applies to attorney fees.

As the record herein shows, dissipation of workmen's compensation benefits through attorney fees and other attorney activities demonstrated to United Mine Workers the positive need for provision in advance for competent and loyal legal assistance in the event of disabling injury or death arising out of and in the course of employment

in the hazardous coal mining industry. It was natural that miners in Convention in 1913 should direct their District officers to establish a legal department. It was a proper joining of forces to accomplish a valid objective of mutual protection. The need to protect miners' legal rights at minimum cost is more crucial today than in 1913.

This Court's *Trainmen* avows that the First Amendment's "guarantees of free speech, petition and assembly give [in this instance, United Mine Workers] the right to gather together for the lawful purpose of helping one another in asserting" statutory rights. *Trainmen's* guidelines fit precisely what United Mine Workers did in establishing their legal aid program: "The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel" and "That is the role played by members who carry out the legal aid program". And, the Act's Section 7 expresses current national labor policy which accords to United Mine Workers the right "to engage in other concerted activities for the purpose of... other mutual aid or protection".

The Union's payment of the attorney's salary to handle workmen's compensation claims does not withdraw the plan from the constitutional protection recognized in *Button* and *Trainmen*. The Illinois Supreme Court's conclusion that United Mine Workers, District 12, "are engaging . . . in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" collides with *Trainmen's* holdings and rationale, and with the rights of coal miners under the Act's Section 7. Mere advice that an injured employee should procure legal services or even those of a particular attorney is "of

little avail if that person still faces an economic barrier" and, as *Trainmen* declares, "The right to petition the courts cannot be so handicapped."

The Illinois Supreme Court's condemnation of the plan of United Mine Workers of America ignores and evades this Court's crucial language in *Trainmen* which sanctions the precise activity herein involved and which reads (377 U.S. 7):

> "It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; *they retain counsel, paid by the union, to represent members in personal lawsuits, a practice similar to that which we upheld in NAACP* v. *Button, supra.*"

Furthermore, the Illinois Supreme Court erroneously restricts this Court's *Button* to "constitutionally protected political expression". Error is manifested not only by the language above-quoted from *Trainmen* but also by the fact that the Question Presented in *Button's* certiorari petition included the element of the organization's defraying litigation costs and expenses. It is not a matter, United Mine Workers submit, of equating protected political expression "with bodily injury litigation", as the Illinois court avowed, but rather implementing that litigation in terms of the First Amendment's guarantees of free speech, petition and assembly under which United Mine Workers have the right to gather together to help and advise one another in asserting their legal rights under compensation statutes and to select a spokesman who could be expected to give the wisest counsel. As *Trainmen* recites, this may not be condemned as a threat to legal ethics.

To reach its conclusion, the Illinois Supreme Court discarded its long-followed doctrine that in Illinois a

voluntary unincorporated labor union has no existence apart from its members to declare that "such associations" may sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship. Yet, *Button* declared that the NAACP and its members are in every practical sense identical and that the aims and interests of the group association have not been shown to conflict with those of its members. *Button's* avowals are equally apposite herein.

The Illinois court's conclusion ignores that the attorney's employment is at the direction and behest of the coal miner members and as their bargaining agent. The Union is no more than the medium through which its individual injured members make effective their constitutional rights, as this Court indicated in *Button*. As the record shows herein, under the United Mine Workers' plan, the attorney receives no instructions or directions and has no interference from District 12 or any of its officers; the attorney's obligations and relations are to and with the several persons he represents; the attorney is available if, but only if, an injured employee desires his services and he is under orders to turn over his file to any other attorney of any member desiring another attorney to represent him. Representation of employees in their injury claims before the Industrial Commission is the "total scope" of the attorney's employment for United Mine Workers.

The Union's interest, as a service agency, in the welfare of its members, singly and collectively, does not cease when a member becomes injured. The Union's long struggle to provide security for employees and their families to enable them to meet problems arising, *inter alia*, from illness is recorded in this Court's *Lewis* v.

Benedict Coal Corp., 361 U.S. 459, and other federal authorities.

The Illinois Supreme Court's reliance upon an interpretation of Canons 35 and 47 collide with interpretations heretofore enunciated by the American Bar Association's Committee on Professional Ethics, which has declared there is nothing unethical in a union's agreeing to pay the legal expenses of a member so long as the attorney's selection is left to the member and he has no responsibility to the union. United Mine Workers' plan is totally consonant therewith. The Committee has also approved an attorney's employment and payment by an insurance company to defend an insured in an action by a third party without making any financial charge to the insured.

Both *Trainmen* and *Button* state positively that a state is forbidden by the Fourteenth Amendment from infringing upon First Amendment rights. Reversal is, therefore, appropriate.

II.

Contrary to the Illinois Supreme Court, there is no compelling state interest to warrant a limitation of Mine Workers' constitutional rights. The Court's judgment and opinion contravene Illinois public policy as expressed by the legislature in the workmen's compensation statute.

The Illinois court's belief that substantial commercialization of the law profession may follow if District 12 is permitted to employ an attorney for the discussed purposes is imaginary rather than real. Herein employee members seeking attorney's services pay nothing out of the awards; the attorney is forbidden to charge or receive any portion of the award. Neither the attorney nor the Union is financially enriched by reason of a larger volume of claims. With the Union's only interest being that an

injured member is adequately compensated, the conflict argument loses its vitality. As *Button* declares, the identity of interest between the Union and its members mitigates the possibility of conflict of interest.

On the other hand, there are compelling reasons why United Mine Workers would institute a group legal service plan. It apprises members of their legal right, brings union members in contact with a competent attorney, and makes legal services available in a manner compatible with Illinois public policy in relation to workmen's compensation cases.

If a labor union has, as *Trainmen* declares, a constitutionally protected right to assist its members in securing competent counsel to prosecute legal claims, such right necessarily must include the right of an unincorporated union to employ on a salaried basis an attorney to perform those services, thereby making the constitutional right a reality rather than merely theoretical.

The Illinois Supreme Court's Judgment and Opinion conflict with public policy as expressed by the legislature of that state in its workmen's compensation statute. A principal objective thereof sought to make certain that no one takes anything out of an award except the injured person or his dependent, if he is deceased, by providing that "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages"; and this applies to an attorney's lien for fees before the Industrial Commission.

III.

The injunctive decree affirmed by the Illinois Supreme Court is without factual support. Even if the Illinois

courts were correct concerning the compensation work, which United Mine Workers deny, nothing sustains the full scope of the injunction. An injunction decree should conform to and be supported by proof, and should not be broader than the case warrants. Since the Illinois Supreme Court's conclusion that "United Mine Workers, District 12, are engaging, . . . in the unauthorized practice of law" was premised upon employment of a salaried attorney to represent individual members' claims before the Industrial Commission, the injunctive decree is far broader than the proof. Even if *Trainmen* and *Button* are inapplicable (which United Mine Workers deny), still the Illinois Supreme Court's affirmance of the trial court's injunction is offensive to those cases in that it violates and fails to provide for the permissive conduct affirmatively avowed by *Trainmen* and *Button*.

ARGUMENT

I. THE ILLINOIS SUPREME COURT'S OPINION AND JUDGMENT VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION, AS WELL AS SECTION 7, LABOR MANAGEMENT RELATIONS ACT, 1947.

A. Historically, Employees In Hazardous Industries Such As Coal Mining Have Utilized Unionism To Protect Them In Employment Problems.

Congress gave full expression to the right of employees to engage in concerted activities for mutual aid or protection first in Section 7 of the Wagner Act and later in Section 7 of the Labor Management Relations Act, 1947 (29 USC 157); but long prior to Congress' enunciation of this portion of national labor policy, this Court recognized the need for trade unionism when, in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U.S. 184, 209, it stated that "Union was essential to give laborers opportunity to deal on equality with their employer".

Traditionally, union members have looked to their labor union for help in problems associated with their working conditions. *Brotherhood of Railroad Trainmen* v. *Virginia*, 377 U.S. 1, 3, expressed this Court's belief that it was quite natural for railroad workers to combine their strength and efforts in the Railroad Brotherhoods to provide insurance and financial assistance to sick and injured members. So, in the coal mining industry, it is inconceivable that anything could be more intimately related to the aid and protection of men working in so hazardous an industry as coal mining,[12] with so high an incidence of injuries, as wise provision in advance for competent and loyal legal assistance in the event of disabling injury or death arising out of and in the course of their employment.

This Court's *Trainmen* records the concern which railroad employees experienced when it became apparent they would not "receive the full benefit of the compensatory damages" that federal statutes intended they should have, because, *inter alia*, of "lawyers either not competent to try these lawsuits . . or too willing to settle a case for a quick dollar" (377 U.S. 3-4).

Coal miners' experience in Illinois, as the record reveals, was comparable. At common law an injured employee was discarded as an economic liability; but, through a system of workmen's compensation acts, which

[12] "*Facts*", 1966 Ed., published by National Safety Council, 425 N. Michigan Ave., Chicago, Illinois, at page 26, records that in 1965 the frequency rate of disabling injuries per 1,000,000 man-hours for all injuries was 6.53 for all industries, but 36.71 for underground coal mining and 8.71 for surface mining.

In Illinois, the trend of compensable work injury rates, based upon injuries reported per 1,000 workers, showed that coal mining in the 1945-64 period had the highest rate, and that in 1964 the compensable work injuries rate in the coal mining industry was 98 per 1,000 workers. Annual Report, "*Compensable Work Injuries Reported*", page A-4, Issued March, 1967 by Illinois Department of Labor. The same publication (p. 39) names bituminous coal mining as one of industries with a high rate of injury incidence.

have been described as "socializing risks", the burden of costs attending industrial injuries has been placed directly on an industry as an overhead operating cost.[13] *Cf. Alaska Packers' Assn.* v. *Industrial Accident Commission, etc.*, 294 U.S. 532, 541. Intended as a more humane way of dealing with the staggering effects of industrial injury under common-law procedures, with its attendant delays, expenses and legal defenses, Illinois' first workmen's compensation act became effective May 1, 1912.[14] Yet, the record herein discloses that delegates elected to District 12's Convention in 1913 declared the need of a legal department because "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 14). It was thus normal that this matter should become a compelling group interest, and not merely the personal problem of an injured miner. It was natural that miners in Convention should have sought relief in their labor union by directing District 12 officers to establish a legal department. As stated by Justice Carter in his dissent in *Hildebrand* v. *State of California*, 225 P.2d 508, 515 (Calif., 1950), a dissent referred to in this Court's *Trainmen* (377 U.S. 7, fn. 13), "It is nothing more than a proper joining of forces for the accomplishment of a proper legal objective of mutual protection." This accords clearly with Section 7 of the Act, which, as already noted, not only gives to employees the right to join and assist labor organizations and to bargain collectively through them, but also *"to engage in other concerted activities for the purpose of . . other mutual aid or protection . ."*

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[13] Gregory, *Labor and the Law (1946)*, p. 415.

[14] Katz and Wirpel, *"Workmen's Compensation, 1910-1952: Are Present Benefits Adequate?"*, Vol. 4, Labor Law Journal (March, 1953), pp. 167, 168.

B. The Legal Aid Plan of United Mine Workers Is Consonant With the Philosophy of Workmen's Compensation Statutes.

Workmen's Compensation acts led the vanguard of social insurance in this country. The benefit scales were not, nor are they now, geared to a partial dissipation through the payment of lawyer fees. As shown elsewhere herein (pp. 36-37), the compensation statute in Illinois provides specifically against any lien upon a claimant's award of benefits. An eminent author of workmen's compensation laws states that "benefit scales are so tailored as to cover only the minimum support of the claimant during disability" and that when the practice of a claimant's having to pay an attorney even in the successful prosecution of his claim for compensation is superimposed upon a closely-calculated system of wage-loss benefits, a serious question arises whether the social objectives of workmen's compensation legislation is thwarted. *Larson's Workmen's Compensation Law*, Vol. 2, p. 345. Indeed, protection of coal miners' legal rights at a minimum cost is more important today than it was in 1913, since injury today in their employment impairs their source of economic sustenance even more than it did in 1913.[15]

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[15] In Katz and Wirpel, *"Workmen's Compensation, 1910-1952: Are Present Benefits Adequate?"*, Vol. 4, Labor Law Journal (March, 1953), pp. 167, 169, the authors considered what happened to benefit levels measured in real terms under workmen's compensation from the time of the original enactment in Illinois to 1952, and observed that for an injured worker with one child in Illinois, the ratio of weekly maximum benefits to average weekly earnings had declined from 98% in 1913-14 to 34% in 1952. For Illinois, in 1965 the ratio of maximum temporary total disability benefit for worker, wife and two dependent children to average weekly wage was 57.2%. Bulletin No. 212, Revised 1967, styled *"State Workmen's Compensation Laws"*, U. S. Department of Labor, p. 34.

C. To Condemn the United Mine Workers' Legal Aid Plan, the Illinois Supreme Court Deviated From Its Traditional Holdings That Unincorporated Labor Unions Have No Existence Apart From Their Members.

Under well-established and long-followed doctrinaire in Illinois, a voluntary unincorporated labor union has no existence apart from its members.[16] Indeed, the Illinois Supreme Court has professed "the question involved is *one of substance . . and not of procedure*". *Montgomery-Ward & Co.* v. *Franklin Union Local No. 4*, 323 Ill. App. 590, 56 N.E. 2d 476, 477. Though conceding its adherence to such doctrinaire (219 N.E. 2d 505), the Illinois Supreme Court wittingly discarded the rule in order to cast District 12 into an entity distinctive from its membership, arguing "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (219 N.E. 2d 505; R. 96-97). This is in contrast to the previous characterization by an Illinois appellate court of a union's legal aid plan as socially needful when, in *Ryan* v. *Pennsylvania R.R.*, 268 Ill. App. 364, 374 (1932), it stated:

> "The evidence . . shows clearly the worthy purpose of the department and the necessity for its organization and maintenance. The instant case is an illustration of its benefit to the members. Respondent, prior to the time that petitioner assumed charge of the case, twice refused to pay Meadows a greater sum than $6 000 in settlement of his claim, but when confronted with a trial, in which petitioner, an able and experienced lawyer, would

[16] Title 28, Smith-Hurd Illinois Statutes (Permanent Ed.) provides that "the common law of England, so far as the same is applicable and of a general nature . . shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

appear as counsel for Meadows, it secretly settled with the latter for $11,000."

Since union members pay dues into their union, in a very real sense they are paying, or helping to pay, the attorney so as to have him available in litigation related to their employment if they desire the attorney's services. *Schwartz* v. *Broadcast Music, Inc.*, DC, S.D. N.Y., 1954, 16 F.R.D. 31, holds that each member of an unincorporated association is a client of the association's lawyer. There is just as close an attorney-client relationship between the attorney and the claimants he represents as there is between any workmen's compensation claimant and any other attorney, the only difference being that in the one instance the attorney fees are paid by a group of individuals jointly through their union, and in the other instance the fee is paid by the individual or often by someone else. Indeed, in the instant case when a claimant desires the attorney's representation made available by himself and his fellow-miners, and the attorney assumes the responsibility, the personal relationship exists and the attorney's professional and ethical obligations attach themselves to that relationship. This is emphasized herein by the undisputed fact that, under the attorney's employment, he receives no "instructions or directions" and has "no interference from the district, nor from any officer" and the attorney's "obligations and relations will be to and with only the several persons" he represents (R. 20). Thus, it is obvious and clear that there has not been any violation of the Canons involved herein since there is no employment of an attorney through an intermediary.

D. The Legal Aid Plan Used By United Mine Workers Finds Judicial Sanction In This Court's *Button* and *Trainmen* Cases.

This Court, in *Trainmen's* clear language (377 U.S.

1, 5), mandated that the First Amendment's "guarantees of free speech, petition and assembly give [in this case, United Mine Workers] the right to gather together for the lawful purpose of helping and advising one another in asserting" statutory rights. While *Trainmen* was concerned with a federal enactment relating to damage actions, the Court's enunciation therein is equally applicable to a state workmen's compensation statute designed to provide coal miners and other workmen with benefits for injuries sustained by them in exchange for common-law damages, since the Court's further avowal that "statutory rights . . would be vain and futile if the workers could not talk together freely as to the best course to follow" (377 U.S. 5-6) emphasizes that the conduct sanctioned in *Trainmen* was impressed with constitutional rights derivative from the First Amendment to the Federal Constitution.[17]

Nor did this Court stop with these avowals in *Trainmen*. Its continued guidelines fit precisely what United Mine Workers did in the instant case in the establishment of their legal department. "The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel" and "That is the role played by the members who carry out the legal aid program" (377 U.S. 6). Moreover, if there be need for a federal statute to authorize their conduct, then the Act's Section 7 serves as an expression of national labor policy to justify the conduct which the Illinois Supreme Court has condemned herein.

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[17] "*Group Legal Services: The Case for BRT*", by George E. Bodle, 12 University of California Los Angeles Law Review 306, 323, recites of *BRT* that "it is clear that the protection of the first amendment cannot, in logic or practice, be confined to consultation about federal laws, but also extends to state laws and rights and liabilities generally."

But whether District 12 be regarded as a jural entity or, as Illinois has proclaimed it, an organization which has no existence apart from its members, *form* does not dissipate the concern the union has with the protection and welfare of its members. As representative of its members employed in the coal industry, the union bargains collectively in behalf of the members as part of its program of improving working conditions. Indeed, this Court has characterized unions acting as collective bargaining representatives as service agencies. *Local 357, Teamsters* v. *NLRB*, 365 U.S. 667, 675-76. Union activities have included the enactment, improvement and enforcement of workmen's compensation statutes. The union's interest in the welfare of its members, singly and collectively, does not cease when a member becomes injured. To the contrary, the injured member's ability to resume work upon recovery or rehabilitation, where recovery is not possible, and his welfare and that of his dependents have been of primary concern to United Mine Workers of America. Its long struggle to "provide security for employees and their families to enable them to meet problems arising from unemployment, illness, old age or death" through a welfare and retirement fund is recorded in the judicial history of this Court's *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 468, and other federal authorities.[18]

E. The Union's Payment of the Attorney's Salary To Handle Workmen's Compensation Claims Does Not Withdraw the Plan From the Constitutional Protection Recognized In the *Button* and *Trainmen* Cases.

Though avowing (R. 104) "the Mine Workers may validly advise their members to seek legal advice in con-

[18] See *Penello, Regional Director* v. *Int. Union, UMWA*, DC, D.C., 1950, 88 F. Supp. 935; *U.S.* v. *Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 187; *U.S.* v. *Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 179.

nection" with their compensation claims and "may properly recommend particular attorneys deemed competent to handle such litigation," the Illinois Supreme Court condemned District 12's "employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (R. 102), emphasizing that "The lawyer is not paid for his services by the client; his salary is paid by the association" (R. 101), ignoring that such employment was at the direction and behest of the coal miner members and as their bargaining agent.

To the United Mine Workers' contention that this Court's *Trainmen* (377 U.S. 1) and *Button* (371 U.S. 415) cases compelled a reversal of the trial court's injunctive decree, the Illinois Supreme Court's response was that *Trainmen* "does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims"; that *Trainmen* does not constitutionally protect the "employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" and that *Button's* "constitutionally protected political expression . . cannot . . be equated with the bodily injury litigation with which we are concerned here" (R. 103). To reach its conclusion, the Illinois Supreme Court of necessity had to ignore and evade this Court's crucial language in *Trainmen*, indicating its imprimatur upon the very activity condemned by the Illinois Supreme Court herein, and reading (377 U.S. 7):

> "It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; *they retain counsel, paid by the union,* to represent members in personal lawsuits, *a practice similar to that which we upheld in NAACP.* v. *Button, supra*" (371 U.S. 415).

Indeed, the Question Presented in *Button's* certiorari petition included the element of the organization's "defraying the costs and expenses of litigation" instituted to vindicate constitutional rights; and it is argued that in tying the decision in *Trainmen* to *Button*, *Trainmen's* "constitutional protection extends beyond the recommendation of lawyers and includes their employment".[19]

So, too, in regard to *Button*, the Illinois Supreme Court failed to follow this Court's admonishment therein when it said (371 U.S. 429) "a State cannot foreclose the exercise of constitutional rights by mere labels." Yet, the Illinois Supreme Court did precisely that in its quotation above, for it is not a matter of equating protected political expression "with the bodily injury litigation," as the Illinois court stated (R. 103), but rather implementing that litigation in terms of the First Amendment's guarantees of free speech, petition and assembly under which coal miners have the right to gather together to help and advise one another in the assertion of their legal rights under the Illinois Workmen's Compensation Act and "to select a spokesman from their number who could be expected to give the wisest counsel" (377 U.S. 5-6). Furthermore, *Trainmen* is clear and positive that its *Button* case is not restricted, as the Illinois Supreme Court claims, to political expression. In *Trainmen*, the Court observed that "the Constitution protects the associational rights of the members of the union precisely as it does those of the NAACP" (377 U.S. 8).

In *Trainmen* (377 U.S. 7), this Court said that "Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully coun-

[19] 29 U. S. Law Week (Supreme Court Proceedings) 3273; Article, *"Availability of Legal Services: The Responsibility of the Individual Lawyer And Of The Organized Bar"*, by Elliott E. Cheatham, 12 University of California Los Angeles Law Review 438, 448-49.

seled adversaries . . and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics." Moreover, while the Illinois Supreme Court professed its adherence to its previous In Re BRT, 13 Ill.2d 391, 150 N.E.2d 163, precluding any financial connection between a union and counsel selected by it to handle individual membership claims, the financial arrangement condemned by the Illinois Supreme Court in its *BRT* case is totally different from the arrangement between United Mine Workers and the attorney representing injured members in workmen's compensation cases. The Illinois Supreme Court itself described the financial arrangement that it condemned thus:

> "No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case. Nor can the Brotherhood fix the fees to be charged for services to its members" (13 Ill.2d 397-98, 150 N.E.2d 167).

Thus, it is readily seen that the financial arrangements proscribed by *BRT* bear no resemblance to the Union's payment of salary in the instant case. Coal miners are not themselves engaging in the practice of law, as *Trainmen* made clear (377 U.S. 6-7), by recommending competent lawyers to each other; and the Union is no more than the medium through which its individual injured members make effective their constitutional rights, as this Court indicated in *Button* (p. 443) quoting from *NAACP* v. *Alabama*, 357 U.S. 449, 459. Indeed, in *Button* (371 U.S. 415, 443) this Court's declaration that the National Association for Advancement of Colored People "and its members are in every practical sense identical"

followed its avowal that "the aims and interests" of that group association "have not been shown to conflict with those of its members". These avowals are equally apposite in the instant situation. The Illinois Supreme Court's condemnation of District 12's financial payment to the attorney on a salary basis could well place injured coal miners in a posture which would "bar them from resorting to the courts to vindicate their legal rights"; mere advice that an injured employee should procure an attorney's services or those of a particular attorney is "of little avail if that person still faces an economic barrier".[20] And, as *Trainmen declares* (377 U.S. 7), "The right to petition the courts cannot be so handicapped." Both *Trainmen* and *Button* make positive that a state is forbidden by the Fourteenth Amendment from infringing upon First Amendment rights.

Only recently the Virginia Supreme Court, interpreting this Court's *Trainmen* case, held that the ruling therein required a broad interpretation, saying that *Trainmen's* mandate "was issued to protect the right to conduct activities under a benevolently inspired plan concerned with the prosecution of rights" under statutes "where the State had failed to show an appreciable contrary public interest." *Brotherhood of Railroad Trainmen* v. *Commonwealth of Virginia ex rel. Virginia State Bar*, 149 S.E. 2d 265, 271 (Va., June 13, 1966).

F. The Illinois Supreme Court's Rulings Herein Vary From the Canons' Interpretation Heretofore Enunciated By the American Bar Association's Committee on Professional Ethics.

In its Informal Opinion No. 469, the American Bar Association's Committee on Professional Ethics an-

[20] Note, 52 Iowa Law Review 351, 356.

nounced that *"There is nothing unethical in an* employer, association or *union agreeing to pay the legal expenses of an employee or member,* so long as the selection of the attorney is left to the employee or member and he has no responsibility to the employer, association or union."[21]

The United Mine Workers' plan is totally consonant with the quoted Opinion: indubitably, the attorney receives no instructions or directions and has no interference from the District, nor from any District 12 officer, and his "obligations and relations" are "to and with only the several persons" he represents (R. 20). The attorney's employment letter (R. 19-20) merely makes the attorney available *if an injured employee "desires your services"* but "If he is represented by other counsel you will immediately turn over his file to such counsel" (R. 19-20). Significantly, departure from such policies is not even suggested by the Bar Association. Indeed, the record would support no charge of any practices deviating from the avowed policies.

The Illinois Supreme Court's views as to the Union's paying an attorney to represent its members' claims in workmen's compensation cases contrasts with the imprimatur, under Canons of the American Bar Association, given to insurance companies. The Association's Committee on Professional Ethics and Grievances, when asked if a lawyer, *employed and compensated by an automobile insurance company,* which holds a standard contract of insurance with an insured, could with propriety *defend the insured* in an action brought by a third party without making any financial charge to the insured, answered in the affirmative. In so doing, the Committee made it clear that "the lawyer so employed *shall represent the insured*

[21] The quoted language is from the May, 1962 Issue of the American Bar Journal, p. 473.

as his client with undivided fidelity" and that "If the insured does not desire to avail himself of the company's obligation to defend the suit including counsel, . . he is at complete liberty to renounce his rights under the insurance contract and employ independent counsel at his own expense."[22]

It is notable that in sanctioning the insurance company's employment and compensating the attorney, the Committee states that "The company and the insured are virtually one in their common interest" (p. 593). As already noted, clearly in the instant situation the same may be said of the Union and its injured employee-members.

Conclusion on Argument I

Thus, United Mine Workers submit that the trial court's injunctive decree (*ante*, pp. 9-10) and the Illinois Supreme Court's affirmance thereof and its opinion, not only are erroneous in holding that the conduct involved herein is violative of Canons 35 and 47, but they are in contravention of the rights guaranteed under the First and Fourteenth Amendments to the Federal Constitution and by Section 7 of the Act (29 USC 157), and are at variance with the holdings in *Trainmen* and *Button*, as well as the rationale thereof. Reversal is appropriate.

II. CONTRARY TO THE ILLINOIS SUPREME COURT, THERE IS NO COMPELLING STATE INTEREST TO WARRANT A LIMITATION OF MINE WORKERS' CONSTITUTIONAL RIGHTS. THE COURT'S JUDGMENT AND OPINION CONTRAVENE ILLINOIS PUBLIC POLICY AS EXPRESSED BY THE LEGISLATURE IN THE WORKMEN'S COMPENSATION STATUTE.

A. There Is No Compelling State Interest to Warrant a Limitation of Mine Workers' Constitutional Rights.

The Illinois Supreme Court believed, and United Mine

[22] *"Opinions of the Committee on Professional Ethics and Grievances,"* published by the American Bar Association (1957), Opinion No. 282, May 27, 1950, pp. 591-96.

Workers say erroneously, that its affirmance of the trial court's decree (*ante*, pp. 10-14), is "permissible in view of the interest of the State in controlling standards of professional conduct" (R. 104).

The Court's belief is that "substantial commercialization of the law profession *may* follow" (R. 105) if District 12 is permitted to employ an attorney for the purposes discussed. Yet, in view of the fact that the instant record contains no suggestion thereof in an experience of 53 years, it is obvious that the Court's statement is imaginary rather than real. Just how there could be commercialization of the legal profession under the undisputed facts herein, the Illinois court does not bother to explain. Such omission is obvious from the facts which show that employee members seeking the attorney's services need not, and indeed do not, pay anything out of the awards; the attorney is forbidden to charge or receive from the individual employee any portion of the recovered amount. With the Union's only interest being that an injured member is adequately compensated, "the conflict argument loses its vitality".[23] Thus, neither the attorney nor the Union is financially enriched by reason of a larger volume of claims. Thus, a traditional argument given for not allowing group legal service plans, namely, that they permit the organization to direct and control the attorney, thereby creating a possible conflict of interest between the individual litigant and the organization does not exist in the instant case. The Illinois Supreme Court in *In Re BRT* conceded that *union interest* "antedates the occurrence of any particular injury" to a union member (13 Ill. 2d 397, 150 N.E. 2d 167); and in *Button*, this Court declared that the identity of interest between NAACP

[23] Note, 52 Iowa Law Review 351, 354.

and its members mitigated the possibility of conflict of interest (371 U.S. 444). These professions have equal applicability in the instant case.[24]

On the other hand, there are compelling reasons why United Mine Workers would institute a group legal service plan. In addition to the reason disclosed by the record for instituting the plan in 1913, an injured worker may not know of his rights to workmen's compensation, or he may not be able to afford an attorney to assist him in collecting maximum compensation, or without guidance from his union spokesman, he might be subjected to pressure from his employer not to prosecute his claim. The instant plan serves three useful functions: (1) it apprises members of their legal rights and of the need for legal assistance; (2) it brings union members in contact with a competent attorney; and (3) it makes legal services available in a manner compatible wth the public policy of Illinois (discussed below). Merely recommending to a person that he needs an attorney or even recommending a particular attorney is of little avail if the injured workman faces the economic barrier of being without funds to employ an attorney. Spreading the cost of legal services among the group by paying an attorney's salary out of the union treasury eliminates reluctance by an impecunious injured workman to seek counsel. Clearly, if a labor union has, as *Trainmen* declares, a constitutionally protected right to assist its members in securing competent counsel to prosecute legal claims; such right necessarily must include the right of an unincorporated union to employ on a salaried basis an attorney to perform those services, thereby making the constitutional right a reality rather than theoretical.

[24] In *"Legal Ethics"*, by Henry S. Drinker, Columbia University Press, 1961, the author (at page 167) states that "It is not believed" that Canon 35 "will prevent the labor unions from finding lawyers to advise their members."

B. The Illinois Supreme Court's Judgment and Opinion Conflict With Public Policy As Expressed By the Legislature of That State.

The compelling state interest which the Illinois court abortively avers finds full challenge in public policy as expressed by the Illinois legislature in its workmen's compensation statute. First effective in 1912, a principal objective thereof sought to make certain that no one takes anything out of an award except the injured person or his dependents, if he be deceased. To that end, the Illinois legislature provided in its Compensation Act's Section 138.21 (Appendix A, p. 2a) that "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages . . ." In *Lasley* v. *Tazewell Coal Co.*, 223 Ill. App. 462, the plaintiff undertook to establish an attorney's lien to collect his fee as defendant's attorney before the Industrial Commission but the Court said:

> "The language of this section is clear and conclusive. . . . There is nothing in the other sections of the Act which in any way conflicts with the provision referred to, and the purpose of the legislature is evident; it undoubtedly intended that no lien of any kind should be allowed to intervene to prevent the workman from receiving the benefit of the monthly compensation awarded to him. . . . The words 'any lien' in Section 21 referred to obviously included the lien provided for by the act creating attorney's liens."

Accord, *Crane Co.* v. *Loone*, 25 Ill. App. 2d 61, 165 N.E. 2d 728; *Parsons* v. *Granite City Steel Company*, 41 Ill. App. 2d 396, 190 N.E. 2d 644 (1963).

Even the Illinois Public Aid Commission is not allowed to reimburse itself out of an award though Illinois' Pub-

lic Assistance Code provides that the Public Aid Commission shall have a charge upon all claims, demands and causes of action for injuries to an applicant for or a recipient of assistance, for the amount of assistance, it also mandates that "The provisions of this section shall be inapplicable to and no charge shall exist upon any claim, demand or cause of action arising under (a) the Workmens Compensation Act . . ."[25]

III. THE INJUNCTIVE DECREE AFFIRMED BY THE ILLINOIS SUPREME COURT IS WITHOUT FACTUAL SUPPORT.

It has been demonstrated herein that the reasons assigned by the Illinois Supreme Court as to a compelling state interest are without factual basis. But even if the Illinois courts were correct concerning the compensation work (which United Mine Workers deny), still nothing in the record sustains the full scope of the injunction directed at District 12, "its agents and employees" (*ante*, pp. 9-10), particularly with reference to the inhibitions therein concerning (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing themselves in any claims other than under the compensation act; (4) employing attorneys to represent them in any other kinds of claims "which they may have under the statutes and laws of Illinois"; and (5) practicing law in any form directly or indirectly.

It is well settled that an injunction decree should conform to and be supported by proof; and it should conform to the requirements of the particular case, so as not to be broader or more extensive than the case warrants. *State*

[25] See *Donoho* v. *O'Connell's, Inc.*, 18 Ill. 2d 432, 164 N.E. 2d 52, which rejected the contention that the exception was unconstitutional because discriminatory and arbitrary. Indeed, in *Donoho* (p. 56) the Illinois Supreme Court said, "It is common knowledge that the amounts recovered under [workmen's compensation] statutes are far smaller than amounts recovered in common-law actions".

of Wyoming v. *State of Colorado*, 286 U.S. 494. See also *NLRB* v. *Express Publishing Co.*, 312 U.S. 426; *Communication Workers* v. *NLRB*, 362 U.S. 479. When it is considered that the Illinois Supreme Court's conclusion that "United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law" was premised upon the employment of an attorney on a salary basis to represent individual members' claims before the Industrial Commission (R. 102), it is obvious that the injunction order, as affirmed by the Illinois Supreme Court, is far broader than the proof. Moreover, even should the Court conclude that its *Trainmen* and *Button* cases are inapplicable, still the Illinois Supreme Court's affirmance is offensive to those cases in that it violates and fails to provide for the permissive conduct affirmatively avowed by *Trainmen* and *Button*.

CONCLUSION

For the reasons herein discussed, United Mine Workers of America, District 12, submit that this Court should reverse and set aside the judgment of the Illinois Supreme Court entered May 23, 1966, herein complained of (R. 106), and its order denying United Mine Workers' Petition for Rehearing (R. 108), as well as the Trial Court's Order of September 7, 1965 (R. 24-25), and remand the case with directions that judgment be entered in favor of United Mine Workers of America, District 12, pursuant to their Motion for a Summary Decree and that the complaint herein be dismissed in its entirety. In any event, the injunction order should be modified.

Respectfully submitted,

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Dated: August, 1967

APPENDIX

APPENDIX

APPENDIX A

Constitution of the United States

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Labor Management Relations Act, 1947:

Section 7 (29 USC 157) *Right of employees as to organization, collective bargaining, etc.*

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

Canons of Ethics of the Illinois State Bar Association

"(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. * * *

"(47) Aiding the Unauthorized Practice of Law. No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

* * *

Illinois Revised Stat. (1959), Ch. 48, Sec. 138.21

"No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. . ."